
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENE LYNCH,
Appellant

v.

DAVID R. LANDY, Deputy Commissioner and
WILLIAM K. ROGERS, Assistant Deputy
Commissioner, Bureau of Employees Com-
pensation, United States Department of
Labor and INDUSTRIAL INDEMNITY CO., et al.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE APPELLEES LANDY AND ROGERS

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JURISDICTIONAL STATEMENT

Appellant filed this action allegedly under the Longshoremen's
and Harbor Workers' Compensation Act, 33 U.S.C. 921 to recover
150,000 in damages as a result of injuries received in the
course of his employment (R. 1-6).^{1/} The district court dismissed
the complaint as to all parties on the grounds inter alia that
the court lacks jurisdiction over the subject matter" (R. 264).
his Court has jurisdiction under 28 U.S.C. 1291.

/ "R." references are to the original record on appeal.

COUNTERSTATEMENT OF THE CASE

Appellant Lynch was employed by Martinolich Ship Repair Co. On November 6, 1961, he was overcome by noxious fumes while cleaning tanks aboard a barge at Oakland, California (R. 110). The employer had immediate notice of this injury and the employee received medical attention on the date of the accident (R. 110). The employer paid the necessary medical bills and voluntarily paid him compensation from November 6, 1961 to December 19, 1961 in the total amount of \$128.57.

On November 23, 1962, Mr. Lynch filed a claim under the Longshoremen's and Harbor Workers' Compensation Act with the Bureau of Employees' Compensation (Appellant's Opening Brief, p. 13). This claim was designated as Claim No. 294-83 and is still pending before the Bureau of Employees' Compensation (R. 109).

In the interim, the appellant had filed suit directly against Martinolich Ship Repair Co. and Industrial Indemnity Company et al. (Civil No. 42571, N.D. Cal. So. Div.). The district court dismissed on the grounds inter alia that (1) the complaint failed to state a claim against the defendants; (2) the court lacks jurisdiction over the subject matter; and (3) the claim was barred by limitations. This Court denied leave to appeal in forma pauperis. The Supreme Court then denied certiorari (R. 221, 382 U.S. 844) and also denied rehearing (R. 222, 382 U.S. 949).

After certiorari and rehearing were denied, appellant again contacted the Bureau of Employees' Compensation. To assist him in his claim and because of the difficulty of understanding his varied motions, the Deputy Commissioner arranged for the Legal Aid Society of Alameda County to attempt to obtain counsel for him (R. 109). Mr. Lynch did not want his case heard by the Assistant Deputy Commissioner assigned to hear the case but wanted "The trial Judge [to] hearing my cause at the U. S. Court of Appeals." (R. 109).

Accordingly, he then brought this suit in the district court. At the hearing on the motion to dismiss, counsel for the Government informed the court that the district court lacked jurisdiction over the matter because the proper forum for the determination of a compensation claim until an award is made or the claim is rejected is the Deputy Commissioner, and not the district court. Judge Carter dismissed the action as to all defendants (R. 264). From that order, appellant filed notice of appeal. Subsequently, Judge Carter issued an additional order, detailing the additional papers subsequently filed by the appellant and treating them as motions for rehearing, and he denied each of them (R. 294).

QUESTION INVOLVED

Whether the district court has jurisdiction of a claim under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq. when the claim is still pending administratively before the Deputy Commissioner.

ARGUMENT

THE DISTRICT COURT CORRECTLY DISMISSED THE COMPLAINT AGAINST THE DEPUTY COMMISSIONER ON THE GROUND THAT IT HAD NO JURISDICTION OVER THE MATTER UNTIL AFTER THE DEPUTY COMMISSIONER HAD ADMINISTRATIVELY DISPOSED OF THE CLAIM.

This Court has expressly recognized that the district court has no jurisdiction of a suit under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq. until

after a hearing and the making of a compensation order, not before. Until such time, by necessary implication, Congress has withheld from the court the power to act.

Paramino Lumber Co. v. Marshall, 95 F.2d 203, 205 (C.A. 9) certiorari denied 305 U.S. 603.

Accord: Leonard v. Liberty Mutual Insurance Co., 267 F.2d 421 (C.A. 3); Thibodeaux v. J. Ray McDermott & Co., 276 F.2d 42, 48 (C.A. 5); Associated-Banning Corp. v. Landy, 254 F.Supp. 275 (N.D. Cal. S.D. 1965).

Therefore, the district court correctly dismissed the complaint because the claim is still pending before the Deputy Commissioner. Thus, it is clear that this action is plainly premature.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

EDWIN L. WEISL, JR.,
Assistant Attorney General,

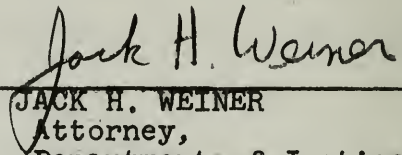
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OCTOBER 1967.

CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.



JACK H. WEINER
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AFFIDAVIT OF SERVICE

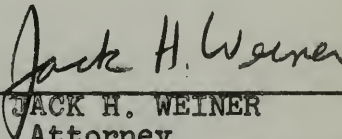
DISTRICT OF COLUMBIA }
CITY OF WASHINGTON } ss.

JACK H. WEINER, being duly sworn, deposes and says:

That on October 13, 1967 , he caused three copies of the foregoing brief for the Deputy Commissioners to be served upon appellant and counsel for the co-appellee by placing them in the United States Mail, postage prepaid, air mail, in an envelope addressed to counsel as follows:

Mr. Eugene Lynch
1753 69th Avenue
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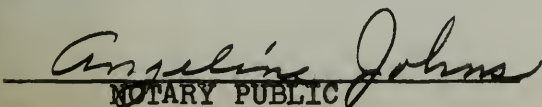
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JACK H. WEINER
Attorney,
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Washington, D.C. 20530.

Subscribed and sworn to before
me this 13th day of October, 1967.

[Seal]


NOTARY PUBLIC

My Commission expires on April 14, 1972.

